



CHARTERED ACCOUNTANTS  
AUSTRALIA + NEW ZEALAND

03 June 2016

Mr Gary Clements  
Chair, Consumer Affairs Australia and New Zealand  
Treasury Building  
Langton Crescent  
PARKES ACT 2600

*Submission via Consumer Law website*

Dear Mr Clements,

### **Submission on Australian Consumer Law Review Issues Paper**

Chartered Accountants Australia and New Zealand (Chartered Accountants ANZ) welcomes the opportunity to provide feedback on the Australian Consumer Law Review Issues Paper (the Issue Paper).

### **General Comments**

There has been a lot of debate on the need to abolish or harmonise fundraising laws in recent times. The current system of state and territory based legislation is fragmented and places a significant burden on the not-for-profit sector.

There is uncertainty as to how Australian Consumer Law (ACL) applies to fundraisers.

Chartered Accountants ANZ is working with JusticeConnect, the Australian Institute of Company Directors (AICD), the Governance Institute of Australia (Governance Institute), CPA Australia and other leading sector bodies on the need for fundraising reform. Justice Connect's Not-for-Profit law service obtained pro bono legal advice from Norman O'Bryan AM SC on the current and potential application of ACL provisions to fundraising activities. With his permission, Justice Connect has shared his advice with us and AICD, Governance Institute, CPA Australia and the other leading sector bodies. We share the view that small changes to the ACL accompanied by repeal of state-based fundraising laws can achieve substantive law reform for the benefit of Australians and the NFP sector.

#### **Chartered Accountants Australia and New Zealand**

33 Erskine Street, Sydney NSW 2000  
GPO Box 9985, Sydney NSW 2001, Australia  
T +61 2 9290 1344 F +61 2 9262 4841

**charteredaccountantsanz.com**

Chartered Accountants Australia and New Zealand ABN 50 084 642 571 (CA ANZ).  
Formed in Australia. Members of CA ANZ are not liable for the debts and liabilities of CA ANZ.



As advised by Norman O’Byrne AM SC, the application of ACL provisions to fundraising activities hinges on whether the fundraising activities can be considered to be ‘in trade or commerce’ and, for some provisions, whether the fundraising activities also involved a supply of goods or services. Based on his advice, we submit that the ACL does apply to many fundraising activities as currently drafted. However, this application of the ACL to fundraising activities is misunderstood — people often do not understand the extent of its application, or how it can be used to achieve redress for fundraising misbehaviour. If the application of the ACL to the particular type of fundraising activity depends on various technicalities (for example, the degree to which the fundraising is carried out professionally), there will be continued confusion and slow uptake of its protections and remedies.

Chartered Accountants ANZ and the other bodies noted above submit that fundraising reform could be achieved through three simple steps:

1. Minor amendments to the ACL to ensure application to fundraising activities is clear,
2. Repeal of state and territory-based fundraising laws, and
3. Work with other regulators (for example, the Australian Charities and Not-for-profits Commission, state-based regulators and self-regulatory bodies) to improve fundraiser conduct (for example, door-knocking, telemarketing, excessive spending of funds on third party services).

We stress that undertaking step 1 without also undertaking step 2 contemporaneously would amount to a failure of reform, and would mean that fundraisers need to continue complying with existing fragmented regulation along with the amended ACL.

### **Recommended changes**

We recommend that, at minimum, sections 18, 20 and 50 of ACL be extended to include specific application to fundraising activities:

- s 18: Misleading and deceptive conduct (note, limited penalties and remedies apply).
- s 20: Unconscionable conduct (note, broader penalties and remedies apply)
- s 50: Harassment.

By way of example, s 18 could be amended as follows:

18 Misleading or deceptive conduct  
(1) A person must not, in trade or commerce or in relation to fundraising activities, engage in conduct that is misleading or deceptive or is likely to mislead or deceive. (2) Nothing in Part 3-1 [unfair practices] limits by implication subsection (1).

We also recommend that 'fundraising activities' be defined in the ACL. A definition could be drafted as follows:

'Fundraising activity' includes any activity the purpose or effect of which is the donation of money, goods or services by persons, but does not include the receipt of funds as consideration only for goods and services supplied through a business or professional activity (whether or not carried on for profit). An activity can be a fundraising activity even if nothing is received by the fundraiser.

We support further consultation with and engagement of technical experts to refine the best approach for achieving the clear application of the ACL to fundraising activities.

### **About Chartered Accountants Australia and New Zealand**

Chartered Accountants Australia and New Zealand is a professional body comprised of over 115,000 diverse, talented and financially astute members who utilize their skills every day to make a difference for businesses the world over.

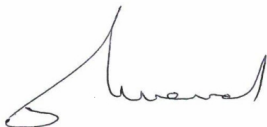
Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international capital markets.

We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

If you have any questions regarding this submission, please contact Geraldine Magarey via email; [geraldine.magarey@charteredaccountantsanz.com](mailto:geraldine.magarey@charteredaccountantsanz.com).

Yours sincerely



**Rob Ward AM FCA**  
**Head of Leadership and Advocacy**